(1680)

Supreme Court of the United States

No. 513—October Term, 1961

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Appellant,

v.

JOHN J. CARROLL,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO VACATE THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS AND REMAND THE CAUSE TO THE DISTRICT COURT WITH DIRECTIONS TO DISMISS THE CAUSE AS MOOT

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Counsel for Appellant
80 Centre Street
New York 13, New York

PAXTON BLAIR
Solicitor General

JOSEPH J. ROSE
Assistant Attorney General
of Counsel

Supreme Court of the United States

No. 513—October Term, 1961

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Appellant,

v.

JOHN J. CARROLL,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION TO VACATE THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS AND REMAND THE CAUSE TO THE DISTRICT COURT WITH DIRECTIONS TO DISMISS THE CAUSE AS MOOT

The appellant moves this Court for an order vacating the judgment of the United States Court of Appeals for the Second Circuit and remanding the cause to the United States District Court for the Southern District of New York with directions to dismiss the cause as moot.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Counsel for Appellant
80 Centre Street
New York 13, New York

Dated: Albany, New York, February 5, 1962.

PAXTON BLAIR
Solicitor General

JOSEPH J. ROSE
Assistant Attorney General
of Counsel

SUPREME COURT OF THE UNITED STATES

No. 513—October Term, 1961

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Appellant,

v.

JOHN J. CARROLL,

Appellee.

MOTION TO VACATE THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS AND REMAND THE CAUSE TO THE DISTRICT COURT WITH DIRECTIONS TO DISMISS THE CAUSE AS MOOT

Statement in Support of Motion

On April 15, 1960, the United States District Court for the Southern District of New York, after a hearing, dismissed a petition by appellee for a writ of *habeas corpus*.

On July 26, 1961, the United States Court of Appeals for the Second Circuit reversed the District Court and directed that appellee be returned from the Matteawan State Hospital to the Pilgrim State Hospital.

Appellant filed a Notice of Appeal to this Court on August 24, 1961, and filed a Jurisdictional Statement on October 18, 1961.

On January 8, 1962, this Court noted probable jurisdiction. On January 24, 1962, the appellee died while at Pilgrim State Hospital and his counsel has now filed and

served a memorandum suggesting that the cause is moot and the appeal must be dismissed.

In *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39 (and cases therein cited), this Court stated: "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below with a direction to dismiss."

"When it is shown that a case brought from a lower federal court has become moot, the Supreme Court, under the present practice, usually reverses or vacates the judgment or decree and remands with directions to dismiss the bill, complaint or petition." *Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States*, p. 499.

We respectfully urge, therefore, that the judgment of the United States Court of Appeals for the Second Circuit should be vacated and the case remanded to the United States District Court for the Southern District of New York, with a direction to dismiss.

Dated: Albany, New York, February 5, 1962.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Counsel for Appellant

PAXTON BLAIR
Solicitor General

JOSEPH J. ROSE
Assistant Attorney General
of Counsel